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IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS & INTERFERENCES

Appeal No.	:	2000-0300
Appellant	:	Russell F. MIZELL, III
Serial No.	:	08/654,600
Filed	:	May 29, 1996
For	:	INSECT ATTRACTION AND CAPTURE DEVICE
Art Unit	:	3643
Examiner	:	Kurt Rowan

BRIEF ON APPEAL

Hon. Commissioner of Patents & Trademarks
Washington, D. C. 20231

Sir:

The following Brief on Appeal is submitted in support of the appeal of the Final Office Action mailed May 16, 2002, wherein the Examiner finally rejected claims 2-13.

The Appeal Fee in the amount of $160.00 is submitted herewith.

To the extent necessary, appellant petitions for an extension of time under 37 CFR § 1.136. Please charge any fees due to Deposit Account No. 50-1165.

Respectfully submitted,
Miles & Stockbridge

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Filed: December 16, 2002

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TABLE OF AUTHORITIES

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REAL PARTY IN INTEREST

As evidenced by an Assignment dated June 13, 1996, which was recorded in the U.S. Patent and Trademark Office as of June 28, 1996, on Reel 8011 at Frame 0663, the real party in interest herein is the University of Florida.

RELATED APPEALS AND INTERFERENCES

There are no pending appeals or interferences which are related to the instant appeal.

STATUS OF CLAIMS

This is an appeal from the final rejection of claims 3-13. Original claims 1 and 2 have been cancelled. It is believed that the rejection is erroneously stated in the Final Office action as being directed to claims 2-13; however, claim 2 was cancelled by the amendment filed February 12, 1999.

STATUS OF AMENDMENTS

No amendment Under 37 CFR § 1.116 was submitted.

SUMMARY OF INVENTION

The present invention relates to a novel device for capturing the noxious insect species, stinkbug [*Hemiptera: Pentatomidae* and *Coreidae*]. The device embodies a bottom portion particularly adapted to attract the stinkbug insects and, taking advantage of the natural movement of the walking or crawling insect, encourage their movement in an upward direction to the top of the device which is designed to permanently entrap the stinkbugs.

Referring to the drawings and, in particular, Figs. 1(a), 1(b) and 3, the bottom portion comprises at least two intersecting "fins" disposed in a vertical plane to define channels whose intersecting walls are triangular in shape and being wider at the base and narrower at the top. The bottom portion is of a color which reflects light having a wavelength that attracts the target stinkbug species.

The top portion of the device is an entrapping receptacle open only at an entrance opening which is positioned over the upper part of the bottom portion such that the channels defined by the intersecting fins terminate within the receptacle. The top portion is constructed such that ambient light is admitted into the interior of the receptacle and onto the channel surfaces.

The stinkbug species is characterized by having a strong inclination to walk or crawl after flight. The intersecting fins of the claimed device cooperate to form channels which encourage the walking and/or crawling stinkbug species to migrate from the wider base portion to the narrower top portion which is surrounded by the trapping receptacle. If desired, an attractant, bait or pheromone for the stinkbug may be incorporated within the trapping chamber. The orientation of the device and the natural movement of the stinkbug species are defined in detail in the specification at page 7, from line 12, to page 8, line 20.

Claim 13 defines the apparatus in its broadest embodiment.

Claims 3, 4 and 6 depend from claim 13 and define preferred embodiments of the "fins".

Claim 5 defines an apparatus which is the most preferred embodiment of the invention, i.e., that wherein the planar fins are right triangles joined at the longest side which is not the hypotenuse such that the shortest sides of the triangle form the base at the bottom portion and the apexes opposite the shortest sides form the upper end of the bottom portion.

Claim 7 is specific to a preferred predominant color of the device for attracting stinkbugs.

Claim 8 is specific to a device of a certain height.

Claim 9 is specific to means for anchoring the apparatus to the ground.

Claim 10 is specific to a device wherein the top portion is of a color which reflects light having a wavelength which neither attracts nor repels the target insect species.

Claims 11 and 12 are specific to devices wherein the material of construction of the top portion is one which admits ambient exterior light into the interior of the chamber.

ISSUES ON APPEAL

Claims 3-13 stand finally rejected under 35 USC §103(a) as being unpatentable over Tedders et al (hereinafter, Tedders).

The issues thus presented for appeal are as follows:

I. Whether the Examiner has made out a *prima facie* case of obviousness of the subject matter claimed in claims 3-13 based upon the teachings of Tedders.

II. Assuming the establishment of a *prima facie* case of obviousness of the claimed invention over Tedders, does the present record satisfactorily rebut the *prima facie* case of obviousness?

GROUPING OF CLAIMS

As provided in 37 CFR § 1.1 92(c)(5), appellant herein states that each of rejected claims 7 and 10-12 stand alone, and appropriate arguments will be set forth hereinbelow as to why appellant considers each of these claims to be separately patentable. The remainder of

the claims stand or fall together.

ARGUMENTS

The issue underlying this ground of rejection is whether Tedders (which discloses a device designed for the attraction and trapping of Pecan Weevils) fairly teaches the claimed trap which is designed for the express purpose of attracting and trapping stinkbugs. For the following reasons, it is respectfully submitted that the only reasonable answer to this question is in the negative. The Examiner states in the Final Office Action at pages 3-4:

> "*---Tedders discloses an apparatus for capturing target species insects. Tedders discloses a first and second fin(s) which are disposed in vertical planes. The fins extend radially outward from a common longitudinal axis defined by a line of intersection of the vertical planes. The fins are wider at a base portion and narrower at a top portion. Tedders shows a surface of the first and second fins defining opposing channel surfaces with portions that are directly exposed to the environment and target species. The channels narrow toward the top portion. The exposed portions may be seen by members of the target species. Tedders discloses that the base is painted brown or white which is a color which reflects light having a wavelength which attracts the target species. Tedders discloses a top portion comprising a 2 liter cylindrical plastic container and a screen funnel nestled into and fixed to the mouth of the plastic container to form the trap. Hence the channels formed by the first and second fins terminate(s) within the receptacle. In reference to claim 13, Tedders shows all of the elements recited with the possible exception of the receptacle being open only at the entrance opening. Tedders does not disclose this but probably is open only at the entrance opening to any meaningful extent, but at any rate, it would have been obvious to have employ(ed) a receptacle open only at the entrance opening (which would preclude a screen top for example) since the function is the same and no stated problem is solved. Tedders shows a screen funnel which would admit ambient exterior light into the interior of the chamber since light can pass through a screen. It should be pointed out that on page 7 of the specification, line 5, it is stated that the top portion is preferable screen-like---*" (emphasis added).

The Examiner's above characterization of the Tedders disclosure is noteworthy for the detail utilized to describe the similarities between the disclosed trap and the claimed trap. However, the Examiner avoids a similarly detailed description of one of the critical distinctions between the two. Thus, the claimed apparatus is of a design and structure for

capturing stinkbugs whereas the trap disclosed by Tedders is of a structure and design for capturing pecan weevils. To that end, the claimed trap is constructed, so far as possible, to allow maximum light to enter the interior of the trap whereas the Tedders trap is designed so as to render the interior and base thereof as dark as possible.

Note the following disclosures In Tedders:

Page 19, first paragraph:

> *"---we have hypothesized that the initial orientation of newly emerged (pecan) weevils is visual and associated with light reflectance by the trunk of the tree (i.e., they are attracted to poorly reflective surfaces of the tree trunk). A test of the hypothesis that weevils are attracted by poorly reflective surfaces should provide an initial test of this hypothesis. It is this hypothesis that is the basis of the design of this weevil trap*---(emphasis added).

Page 28, first paragraph under "Conclusions":

> *"---Pecan weevil adults at time of emergence from the soil were attracted to dark-colored traps in significantly larger numbers compared to those attracted by light-colored traps. Dark-colored traps adjacent to whitewashed tree trunks also significantly increased weevil capture compared to traps adjacent to natural trees, providing a good method for monitoring the emergence of weevils. --- These behavioral responses may be that weevils visually perceive dark traps as tree trunks and whitewashed tree trunks are not recognized as such---"* (emphasis added).

Page 29, last paragraph:

> *"---In addition to presenting a new type of weevil trap, this report provides evidence that a pecan weevil's instinct leads it not only to move upwards just after it emerges from the soil but to also seek out dark objects. This apparent preference for dark objects may be a behavioral trait that can be further utilized to control weevil populations and perhaps other closely related species as well---".* (Emphasis added)

The entire thrust of the Tedders reference is towards a "dark" colored, "poorly reflective" trap that is useful for attracting and trapping pecan weevils. Thus, note the tests reported in the "Materials and Methods" portion of the reference (page 19) wherein comparative tests were conducted between dark and white, i.e., reflective traps. In the

"Results and Discussions" section, it is clearly stated that the dark, non-reflective traps were vastly superior to the reflective, bright traps.

On the other hand, the claimed system is highly light reflective, light colored and is designed to admit as much light as possible so as to lure and capture stinkbugs. In this regard, note the disclosure in the first full paragraph of page 29 of Tedders:

> *"---Brown and white traps were found to collect many other species of arthropods. including various spiders, larvae and pupae of* Chrysoperla rufflabris *(Brumeister), larvae and adults of Olla* v-nigrum *(Mulsant), vegetable weevils,* Listoderes difficilis *Germar, Fuller rose beetles,* Asynonychus godmani *Crotch, the cricket* Gryllus rubens *Scudder, and the larvae and adults of the recently introduced lady beetle,* Harmonia axyridis *(Pallas)---".*

This disclosure of other insects susceptible of capture by the Tedders trap is noteworthy for its failure to include stinkbugs.

There is a very good reason why the above is true. Stinkbugs and pecan weevils are not related insect species; the latter being *Cleopter: Curculionidae* whereas stinkbugs are *Hemiptera: Pentatomadiae* and *Coreidae.* There is no evidence or prior art of record that equates these two entirely different species of insect in any aspect, whether it be size, mating habits, feeding habits or any other behavior. Thus, it is apparent that those skilled in the art would not be led from the teachings of Tedders to the claimed stinkbug attracting and capturing trap. Tedders teaches that the trap should be "dark" and "poorly light reflective". Indeed, the reference teaches that the disclosed traps should be placed near trees that have had their trunks "whitewashed" so as to render them unattractive to pecan weevils, the weevils then seeking out the dark, unreflective traps. Similarly constructed and employed traps would be entirely unsuitable for attracting and trapping stinkbugs.

Indeed, the claims specify not only that the attracting portions of the trap are light colored, but also that the trap be constructed so as to admit as much ambient light as possible.

This is in direct contradiction of the teachings of Tedders, quoted above, that the interior and pecan weevil attracting portions of the trap must be "dark" and "poorly light reflective".

To circumvent this contraindicative teaching of the reference, the Examiner misrepresents the disclosure of Tedders in the paragraph bridging pages 3 and 4, in the last two lines of page 4 and in the paragraph bridging pages 5 and 6 of the final Office Action. In the former, the Examiner states:

> *"---Tedders shows a screen funnel which would admit ambient exterior light into the interior of the chamber since light can pass through a screen. It should be pointed out that on page 7 of the specification, line 5, it is stated that the top portion is preferabl(y) screen-like---"*

At the bottom of page 4, the Examiner states:

> *"---the top portion of Tedders admits ambient light into the interior of the chamber---Tedders discloses a screening (funnel) and a plastic container---"*

In the paragraph bridging pages 5 and 6, the Examiner states:

> *"---As to the plastic top---the plastic top of Tedders is probably two liter soft drink bottle which even if colored allow the passage of light---".*

That these statements constitute, at the least, misinterpretations and, at worst, misrepresentations of the disclosure of Tedders will be apparent from a closer look at the above three statements by the Examiner. First, although Tedders does disclose "a screen funnel", this funnel is "nestled into and fixed to the mouth of the plastic container to form the trap". Thus, the screen is hidden from the "ambient light" by the plastic container. Therefore no light can penetrate the screen unless it passes through the walls of the plastic container.

Secondly, the statement, "the top portion of Tedders admits ambient light into the interior of the chamber", is completely unfounded. There is nothing in the reference to suggest that the plastic container employed admits light. Indeed, the fact that the disclosed trap is hypothesized by Tedders to be successful against pecan weevils because it is non-light reflective and dark contradicts the statement by the Examiner. One skilled in the art would conclude that the plastic container would be opaque to light in order to render the interior of

the chamber as dark as possible in order to render the trap optimally successful. That skilled artisan could hardly be expected to employ a clear plastic container or anything else that would facilitate the entry of ambient light into the trap and thereby lessen the "darkness" thereof.

Thirdly, there is no basis in the disclosure of Tedders for the supposition that the "plastic top *is probably a two liter soft drink bottle which even if colored yellow allow the passage of light".* Such a statement by the Examiner is clear evidence of a reading into the reference of a disclosure that simply is not there in order to shore up the rejection.

Since the Examiner admits that there are structural differences between the trap disclosed by Tedders and that claimed herein the Examiner must support the stated ground of rejection with prior art or some evidence that would lead one skilled in the art to the conclusion that these modifications would lead to the attraction and trapping of stinkbugs. Nor can the Examiner argue that these modifications do not change the function of the Tedders trap. It will be demonstrated below that these "modifications" render the Tedders trap inoperable for its intended purpose, i.e., the attraction and trapping of pecan weevils.

Where is the teaching, other than the applicant's own disclosure, that stinkbugs are attracted to a certain type of structure and tend to crawl upward therein, thereby rendering them susceptible to attraction and capture as they are by the claimed device. Lacking this critical prior art teaching the Examiner's case for obviousness necessarily fails.

It is well settled that the prior art must suggest the problem sought to be solved by a claimed invention before it can be said to suggest or disclose its solution. See In *re Shaffer, 108 USPQ 326;* In *re Aujhauser, 158 USPQ 35 1; Graham v.* John *Deere, 148 USPQ 459; US v. Adams 148 USPQ 479* and In *re Nomiya, 184 USPQ 607.* Tedders does not mention stinkbugs; indeed the reference is exclusively limited to the unique problem of pecan weevils. The reference goes to great pains to identify the habits and peculiarities of pecan weevils for

the purpose of designing a trap suitable for attracting and capturing pecan weevils. The Examiner has cited no evidence or prior art that would lead one skilled in the art to modify the Tedders trap so as to render it operable to attract and capture an entirely different species of insect, namely, the stinkbug.

Indeed, in areas where no prior art is cited to show an element of the claim, the Examiner resorts to the dangerous position of taking Official Notice that the element is old and well known. It is painfully obvious that the Examiner has combined a hindsight reconstruction of the invention from the applicant's own disclosure with this "taking of Official Notice" of elements missing from the prior art to reject the claims over Tedders. In order to justify a rejection based upon a reference, it is necessary that the reference should contain something to suggest the modifications required to arrive at the claimed invention. *Exparte Walker, 135 USPQ 195; Exparte Fleischmann, 157 USPQ 155.* The prior art reference cannot be viewed as if appellant's invention was included therein as a part of the knowledge possessed by one of ordinary skill in the art. The prior art reference itself must suggest the combination of elements necessary to render the claimed invention obvious to one skilled in the art; and resort must not be had to applicant's own disclosure and the utilization of hindsight for the guiding hand that dictates the rejection.

It is in this area that the Examiner seriously mischaracterizes the teachings of the reference to the detriment of the validity of this ground of rejection. At page 3, line 10, the Examiner states that Tedders teaches "white colored bases" for the disclosed trap. Actually, what Tedders does disclose in this context is painting the trees that pecan weevils normally gravitate toward white so that the weevils will be repelled therefrom and attracted to the dark, non-reflective Tedders traps located nearby. Thus, Tedders, rather than suggesting the claimed device, actually teaches away from it by dictating that the trap should be dark colored and offer a dark, non-reflective harbor the target pecan weevils.

A legal conclusion of patent invalidity for obviousness must be supported by findings on the four factual inquiries set forth in *Graham v. John Deere Co.,* 459 (1966)]. Precedent clearly establishes that an Examiner must make Graham findings before rejecting a claim for obviousness. See *Jones v. Hardy,* 727 F.2d 1524, 1529, 220 USPQ 102 1,1025 (Fed. Cir. 1984)); *Custom Accessories, Inc. v. Jeffrey-Allan Indus., Inc.,* 807 F.2d 955, 961, 1 USPQ2d 1196, 1200 (Fed. Cir. 1986), In *Loctite Corp. v. Ultraseal Ltd,* 781 F.2d 861, 228 USPQ 90 (Fed. Cir. 1985), it was stated:

> *"---In patent cases, the need for express Graham findings takes on an especially significant role because of an occasional tendency --- to depart from the Graham test, and from the statutory standard of unobviousness that it helps determine, to the tempting but forbidden zone of hindsight. Thus, we must be convinced --- that --- Graham (was actually applied)--" The necessity of Graham findings is especially important where the invention is less technologically complex, [In re Dembiczak, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999)]. In such a case, the danger increases that the very ease with which the invention can be understood may prompt one to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teache--2'*

In order to prevent a hindsight-based obviousness, analysis, the relevant inquiry for determining the scope and content of the prior art is whether there is a reason, suggestion, or motivation in the prior art or elsewhere that would have led one of ordinary skill in the art to arrive at the claimed invention from the applied prior art. See, e.g., *In re Rouffet,* 149 173d 1350,1359, 47 USPQ2d 1453, 1459 (Fed. Cir., 1998) ("[T]he Board must identify specifically the reasons one of ordinary skill in the art, would have been motivated to select the (teachings) and to combine them to render the claimed invention obvious."); *In re Dembiczak,* 175 F3d at 90, 50 USPQ2d at 1617 ("Our case law makes clear that the best, defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art teachings."). Determining whether there is a suggestion or motivation to

modify a prior art reference is one aspect of determining the scope and content of the prior art, a fact question subsidiary to the ultimate conclusion of obviousness. *Sibia Neurosciences, Inc. v. Cadus Phanna. Corp.*, 225 EM 1349, 1356, 55 USPQ2d 1927, 1931 (Fed. Cir. 2000); *Tec Air Inc. v Denso Mfg., Inc.*, 192 F.M. 1353, 1359, 52 USPQ2d 1294, 1298 (Fed. Cir. 1999) (stating that the factual underpinnings of obviousness include whether a reference provides a motivation to combine its teachings).

The determination of the level of ordinary skill in the art is also an integral part of the Graham analysis. See *Custom Accessories,* 807 F.2d. at 962, 1 USPQ2d at 1201 ("Without [a determination of the level of ordinary skill in the art], a district court (i.e., Examiner) cannot properly assess obviousness because the critical question is whether a claimed invention would have been obvious at the time it was made to one with ordinary skill in the art."). Factors that may be considered in determining the ordinary level of skill in the art include: 1) the types of problems encountered in the art; 2) the prior art solutions to those problems; 3) the rapidity with which innovations are made; 4) the sophistication of the technology; and 5) the educational level of active workers in the field. See id. at 962, 1 USPQ2d at 1261 (citing *Envtl. Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 697, 218 USPQ 865, 868-69 (Fed. Cir. 1983)). The Examiner has presented no evidence as to this "integral part" of the Graham analysis required to validate obviousness.

The Examiner also erred in failing to consider, or at least to discuss, evidence of secondary considerations. The authorities clearly hold that secondary considerations, when present, must be considered in determining obviousness. See, e.g., *Loctite,* 781 1 F.2d at 873, 228 USPQ at 98 ("[Secondary considerations---, when present, must be considered---", citing *Simmons Fastener Corp. v. Ill. Tool Works, Inc.*, 739 F.2d 1573, 1575, 222 USPQ 744, 746 (Fed. Cir. 1984). "Only after all evidence of nonobviousness has been considered can a conclusion on obviousness be reached---", citing *Ashland Oil, Inc. v. Delta Resin &*

Refractories, Inc., 776 F.2d 281, 306, 227 USPQ 657, 662 (Fed. Cir. 1985)). Indeed, in *Stratoflex, 713 F. 2d at 1538, 218 USPQ at 8 79.* the CAFC said:

> *"---Evidence of secondary considerations may often be the most probative and cogent evidence in the record. It may often establish that an invention, appearing to have been obvious in light of the prior art was not. It is to be considered as part of all the evidence, not just when the decision maker remains in doubt after reviewing the art--- "*

"Proceeding contrary to the accepted wisdom ... is 'strong evidence of unobviousness.' " In *re Hedges,* 783 F2d 1038, 1041, 228 USPQ 685, 687 (Fed. Cir. 1986) (citing WL *Gore & Assoc., Inc. v. Garlock, Inc.,* 721 F.2d 1540, 1552, 220 USPQ 303, 312 (Fed. Cir. 1983)). In the present case, the inventor proceeded "contrary to the wisdom" of the reference by employing materials of construction that were light and reflective rather than dark and non-reflective in order to arrive at a result completely different from that of the reference.

Thus, the legal conclusion of invalidity for obviousness depends on the four factual inquiries identified by Graham v. John Deere Co. as concerning (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) secondary considerations of nonobviousness.

In the present case the Examiner has effed by failing to conduct a Graham analysis. Indeed the Examiner has failed to even mention Graham, much less analyze the disclosures of the prior art. The necessity of Graham is especially important where, as in this case, the invention is less technologically complex. In such a case, the danger increases that "the very ease with which the invention can be understood may prompt one to 'fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher,'" *In re Dembiczak*, 175 F.3d 994, 50 USPQ2d 1614 (Fed. Cir. 1999).

It is clear that the authorities are unanimous in holding that it is impermissible to use the claimed invention as an instruction manual or "template" to piece together isolated disclosures and teachings of the prior art so that the claimed invention may be rendered

obvious. A rejection based on § 103 must rest on a factual basis, with the facts being interpreted without hindsight reconstruction of the invention from the prior art. In making this evaluation, the examiner has the initial duty of supplying the factual basis for the rejection he advances. He may not, because he doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. See *In re Warner, 379* F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968).

Although the Examiner has not made out a prima facie case of obviousness for the reasons set forth above, nevertheless, applicant has submitted a Declaration Under 37 § CFR 1. 132 that unequivocally establishes the unobvious and unexpected results associated with the claimed invention when compared with the disclosure of Tedders.

SEPARATE GROUPING OF CLAIMS

Each of rejected claims 7 and 10-12 are separately patentable.

Claim 7 states that the apparatus is one wherein the predominant color is one which reflects about 15% of the incident light in a wavelength of from 300 nm to about 500 nm and about 55-70% of the incident light in a wavelength of from about 500 nm to about 750 nm. The Examiner has cited no prior art disclosing or suggesting such a trap and has presented no arguments or evidence that such a trap would be suggested or obvious over Tedders.

Claim 10 states that the interior and exterior surfaces of the chamber comprising the top portion of the trap are predominantly of a color which reflects light having a wavelength which neither attracts nor repels the target insect species. The Examiner has cited no prior art disclosing or suggesting such a trap and has presented no arguments or evidence that such a trap would be suggested or obvious over Tedders.

Claim 11 states that the top portion of the trap comprises a material of construction which admits ambient exterior light into the interior of the chamber and onto the channel surface of at least one channel. The Examiner has cited no prior art disclosing or suggesting such a trap and has presented no arguments or evidence that such a trap would be suggested or obvious over Tedders. Moreover, for the reasons set forth above, Tedders actually teaches away from a trap that admits exterior light.

Claim 12 defines the material of construction of the top portion as screening which is impervious to the passage therethrough of stink bugs. The Examiner has cited no prior art disclosing or suggesting such a trap and has presented no arguments or evidence that such a trap would be suggested or obvious over Tedders. Moreover, for the reasons set forth above, Tedders actually teaches away from a trap that admits exterior light.

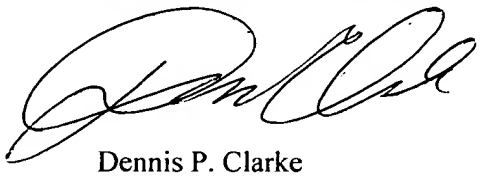
CONCLUSION

Since (1) there is no factual basis in the prior art relied on which supports the proposed rejection, and it is apparent that the examiner's conclusion of obviousness is based on hindsight reconstruction of the claimed invention from isolated disparate teachings in the prior art reference which is not concerned with the problem sought to be solved by the claimed invention and (2) applicant has submitted a showing of unobvious results associated with the claimed invention over Tedders, this ground of rejection is not sustainable.

Accordingly, a reversal of the Final Rejection and a remand of the application to the Examiner for immediate allowance is respectfully requested.

Respectfully submitted,

MILES & STOCKBRIDGE



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APPENDIX

CLAIMS ON APPEAL

3. The apparatus of claim 13 wherein said planar fins are triangular in shape.

4. The apparatus of claim 3 where in the angles of said fins opposite the longitudinal axis measure between about 60° and 80°.

5. The apparatus of claim 3 wherein said planar fins are essentially right triangles joined at the longest side which is not the hypotenuse such that the shortest sides form the base of the bottom portion of the apparatus and the apexes opposite said shortest sides form the upper end of said bottom portion.

6. The apparatus of claim 3 having four triangular fins.

7. The apparatus of claim 13 wherein said predominant color is one which reflects about 15% of the incident light in a wavelength of from about 300 nm to about 500 nm and about 55%-70% of the incident light in a wavelength of from about 500 nm to about 750 nm.

8. The apparatus of claim 13 wherein said bottom portion has a height of from about 30 to about 120 cm.

9. The apparatus of claim 13 wherein the base of said botton portion contains means for anchoring said apparatus to the ground.

10. The apparatus of claim 13 wherein interior and exterior surfaces of said chamber comprising said top portion are predominantly of a color which reflects light having a wavelength which neither attracts nor repels the target insect species.

11. The apparatus of claim 13 wherein said top portion comprises a material of construction which admits ambient exterior light into the interior of said chamber and onto said channel surface of said at least one channel.

12. The apparatus of claim 13 wherein said material of construction of said top portion is screening which is impervious to the passage therethrough of said stink bugs.

13. An apparatus for capturing target insect species comprising stinkbugs comprising:

a bottom portion for attracting the target insect species and for directing said target insect species toward and into a top portion for the capture thereof;

said bottom portion comprising at least a first and a second fin, said first fin being disposed in a first substantially vertical plane and said second fin being disposed in a second substantially vertical plane, said first and second fins extending radially outwardly from a common longitudinal axis defined by a line of intersection of said first and second substantially vertical planes;

a surface of said first fin and a surface of said second fin defining opposing channel surfaces of an outwardly facing channel, said channel surfaces having portions which are directly exposed to an environment in which said target species is present, whereby said directly exposed portions may be seen by members of said target species from positions beyond a perimeter of said apparatus;

each of said first and second fins being wider at a base portion thereof and narrower at a top portion thereof, whereby said channel defined by said surfaces of said first and second fins narrows from said wider base portions to said narrower top portions; said bottom portion being predominantly of a color which reflects light having a wavelength which attracts the target insect species;

said top portion of said apparatus comprising a receptacle, said receptacle being open only at an entrance opening, and wherein said entrance opening is positioned at and substantially surrounds, an upper part of said bottom portion, whereby said channel formed by said first and said second fins terminates said receptacle;

said top portion of said apparatus comprising a material of construction which admits ambient exterior light into the interior of said receptacle and onto said channel surface.